IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.144 OF 2000

1. Modi Xerox Limited)
254-D-2 Nyloc House)
Dr.A.B.Road, Worli,)
Mumbai 400 025.)

2. Mr. Niquela Thomas)
Sales Training & Mktg.)
Manager.)

3. Mr.Rohit Gupta)
Customer Satisfaction)
Manager.)

4. Ms.Melita Reddy)
Customer Satisfaction)
Manager.)
All at 254-D-2 Nyloc House)
Dr. A.B.Road, Worli,)

Mumbai 400 025.)

5. Shri Hamir Bakshi)
Operations Manager)
Modi Xerox Limited)
215, M.V.Road, 3rd floor,)
Andheri (W), Mumbai-400069).... Petitioners

Versus

1. Ms Niloo Makhija)
D-204 Kuber Apartments)
Ambadi Main Road,)
Vasai (W), Dist. Thane.)

2. The State of Maharashtra).... Respondents

Mr.Rajesh Gehani for Petitioners
Mr.R.S.Upadhyay for Respondent No.1
Mr.B.H.Mehta for Respondent No.2

CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.
DATE : 21ST MARCH, 2005

ORAL JUDGMENT : (Per Khandeparkar, J.)

1. Heard. Perused the records.

2. The Petitioners seek to challenge the complaint filed by the Respondent No.1 being Misc. Criminal Complaint (ULP) No.18 of 1999 along with the process issued by the Labour Court under Order dated 15.3.1999 and confirmed by the Industrial Court by Order dated 16.11.1999. The grievance of the Petitioners is that the complaint does not disclose the offence so as to enable the Labour Court to take cognizance thereof under Section 48 of MRTU & PULP Act, 1971.

3. Few facts which are relevant for the decision in the matter are that the Respondent No.1 was transferred by Order dated 16.3.1998 from her initial posting at Andheri to the office of the Petitioners at Vashi. The same was sought to be challenged by way of Complaint No.319 of 1998, which was allowed by the Industrial Court and the transfer Order was quashed by its Order dated 16.12.1998 and the Petitioners Company was

directed to allow the Respondent No.1 to work at Andheri on her usual allowance and status and was also directed to pay cost of Rs.1000/=. The Order of Industrial Court was sought to be challenged by way of Writ Petition being Writ Petition No.141 of 1999, which came to be admitted on 15.1.1999, however, no interim relief was granted. Consequently the order passed by the Industrial Court on 16.12.1998 continued to be enforceable. By Order dated 15.1.1999 issued by the Petitioner Company the Respondent No.1 was directed to report to her duties at Andheri. The Respondent No.1 accordingly reported to her duties with effect from 18.1.1999. The original posting of the Respondent No.1 was as a Customer Relation Co-ordinator and she was sought to be transferred against the said post at Andheri. By advocate’s notice dated 5.2.1999 it was informed to the Petitioner Company that she had not been granted her original status as she was not paid with the allowances and she was not being allowed to do any work in the capacity as the Customer Relation Co-ordinator. The allegations in that regard were denied by the Petitioner Company by their letter dated 15.2.1999. The Respondent No.1 consequently filed a Criminal Complaint (ULP) No.18 of 1999 against the Petitioner Company and

in that she complained that though she had been allowed to report to the office at Andheri, she was not being given the earlier status nor she was being allowed to do any work and she was being made to sit idle for most of the time. She also complained of having not received the amount of cost of Rs.1000/=. Verification of the Complaint was made on 24.2.1999 and process came to be issued pursuant to the Order dated 15.3.1999 fixing the hearing of the Complaint on 4.5.1999. Meanwhile the Petitioner Company filed Misc.Criminal Revision Application (ULP) No.2 of 1999 challenging the said process issued against the Petitioners in the said Complaint. By interim order dated 3.5.1999 the process issued against the Petitioners was stayed, however, after hearing the parties the Misc. Cri.Revision Application was dismissed by the Industrial Court by its Order dated 16.11.1999. Hence, the present Petition.

4. The process issued against the Petitioners and the Order passed by the Industrial Court are sought to be challenged on two grounds, firstly, that the complaint does not disclose necessary particulars so as to enable the Court below to take cognizance thereof under Section 48 of MRTU & PULP Act and secondly that

the complaint No.319 of 1998 was not filed against the Petitioner Nos.3, 4 and 5 and they were neither the parties to the proceeding before the Labour Court wherein the original order dated 16.12.1998 was passed, nor the present Complaint discloses how they can be held responsible for alleged non compliance of the said order dated 16.12.1998 passed by the Labour Court.

5. As regards the first ground of challenge, bare reading of the Complaint discloses that by the order dated 16th December, 1998 the Labour Court had specifically directed the Petitioner Company to transfer the Respondent No.1 to her original post at Andheri and to allow her to work at Andheri on her usual allowances and status besides paying cost of Rs.1000/=, however, the Respondent No.1 was being made to sit idle for most of the time and she was not paid the allowances in terms of the said order nor the cost amount. The specific averment in that regard in para 2 read "The Complainant states that although she has been allowed to report for work at Andheri her usual work, allowances and status has not been given to the complainant. The complainant further states that although the complainant was doing the work of Customer Relation coordinator her earlier

work was not being assigned to her and she is required to sit idle for most of the time." Undoubtedly therefore these averments disclose the basic facts which are required to take cognizance in terms of Section 48 of MRTU & PULP Act. Undisputedly the provisions under Section 48 relate to the proceedings which can be initiated by the aggrieved party in case of non compliance of the Order passed by the Labour Court under Section 30 of the said Act. Undisputedly the Order dated 16.12.1998 was passed in exercise of powers under Section 30 of the said Act and by the said Order, it was specifically directed to retransfer the Respondent No.1 to her earlier post at Andheri with a specific direction to allow her to work at Andheri on her usual allowances and status besides payment of cost of Rs.1000/=. The complaint on the face of it discloses that though the Respondent No.1 was allowed to join the Andheri Office, she was not allowed to do any work as Customer Relation Coordinator, the work which she was carrying out prior to her transfer from Andheri to Vashi. The complaint also discloses non payment of the allowance which was required to be paid as also the cost amount. Being so, the basic ingredients disclosing the offence in terms of Section 48 of the Act are clearly revealed from the

contents of the complaint. Merely because further details are not disclosed, it cannot be said that no sufficient materials are disclosed before the concerned Court for issuance of the process in the matter under Section 48 of MRTU & PULP Act. The first ground of challenge therefore fails and is being rejected.

6. With regards second ground of challenge undisputedly the Order dated 16th December, 1998 discloses that the Petitioner Nos.1 and 2 were parties to the said proceedings. The other petitioners were not parties to the said proceedings. Undisputedly the order dated 16.12.1998 passed under Section 30 of the Act was in the form of direction to the Company to restore the position at the office at Andheri which the Respondent No.1 was holding prior to her transfer to Vashi. Undoubtedly there was no order passed by the Labour Court in exercise of powers under Section 29 of the said Act so as to hold that the said Petitioners are also responsible for non compliance of the said Order. In any case para 3 of the Petition to which attention was drawn while contending that the same discloses the necessary averments to hold that the said Petitioners were responsible for non compliance of the order dated

16.12.1998, in fact it does not disclose any fact as such which can reveal the responsibility of the remaining petitioners for non compliance of the order dated 16th December, 1998. Merely because the Petitioner no.3 is a Director, it cannot be presumed that he was incharge of the day to-day affairs of the Petitioner Company in relation to the distribution of the work at Andheri Office or that he was incharge for due compliance of the order passed by the Labour Court or the order in question. In the absence of specific averments disclosing the facts which could reveal the responsibility of Respondent No.3 to comply with the said order on behalf of the company and the consequential criminal liability, mere submission that Respondent no.3 in his capacity as Director was required to implement the order would not be sufficient to arraign him as an accused in a criminal complaint for non compliance of the Order dated 16th December, 1998.

7. As regards the Petitioner Nos.4 and 5 are concerned the averments in para 3 are mere submissions. Neither averments disclose that any of the said petitioners was incharge of the management of the office at Andheri or in relation to the distribution of the

work in the Andheri Office nor it discloses that either of them being responsible in any manner for not giving work to the Respondent No.1 or for non payment of the allowances or the cost in terms of the order dated 16th December, 1998. Mere submissions regarding failure on the part of the said Petitioners cannot be sufficient to arraign them as the accused in the criminal complaint for non compliance of the order. Being so, in the absence of actual foundation being led for accusing the Petitioners Nos.3 to 5 being responsible for non compliance of the Order dated 16th December, 1998 the Petitioners are justified in contending that no process could have been issued against the said Petitioners.

8. The Petition therefore partly succeeds. The process issued against the Petitioner Nos.1 and 2 cannot be found fault with and therefore as far as challenge to the process against the Petitioner Nos.1 and 2 is concerned, the same is rejected. However, the process issued against the Petitioner Nos. 3 to 5 is hereby quashed and complaint against the Petitioner Nos.3 to 5 stands dismissed. Rule is made absolute in above terms with no order as to costs.

(R.M.S.Khandeparkar,J.)

(P.V.Kakade,J.)